International Seabed Authority ISBA/22/LTC/5

Legal and Technical Commission

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Status of contracts for exploration in the Area

Report of the Secretary-General

1. The present report provides information on the status of contracts for exploration in the Area since the Legal and Technical Commission last met, in July 2015. Contracts currently pertain to each of the three mineral resources for which the International Seabed Authority has adopted regulations on prospecting and exploration. These are polymetallic nodules, polymetallic sulphides and cobalt-rich ferromanganese crusts. In addition, the report contains information on the status of implementation of the decision of the Assembly of 25 July 2013 relating to the establishment of overhead charges for the administration and supervision of exploration contracts. The information provided herein is up to date as at 31 January 2016.

I. Status of contracts for exploration

2. As at 31 January 2016, 23 contracts for exploration had entered into force (14 for polymetallic nodules, 5 for polymetallic sulphides and 4 for cobalt-rich ferromanganese crusts). A complete list of the contracts, with details of the contractor, the sponsoring State if applicable, the general location of the exploration area and the dates of entry into force and expiry of each contract, is provided in annex I to the present report.

3. Since the twenty-first session of the Commission, in July 2015, one new contract has been signed. On 9 November 2015, a contract for exploration for cobalt-rich ferromanganese crusts with Companhia de Pesquisa de Recursos Minerais S. A. was signed in Brasilia.

4. With regard to three plans of work for exploration approved by the Council at its twentieth session, it is anticipated that contracts for exploration will be signed before the twenty-second session of the Commission, in July 2016, given that they are near completion. They relate to contracts for exploration for polymetallic nodules with UK Seabed Resources Ltd. and Cook Islands Investment Corporation

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and to the contract for exploration for polymetallic sulphides with the Government of India.

5. With regard to the plan of work for exploration submitted by China Minmetals Corporation and approved by the Council at its twenty-first session, it is expected that the contract will be signed in 2016.

6. Six contracts for exploration for polymetallic nodules will expire in 2016. They are with Interoceanmetal Joint Organization, Yuzhmorgeologiya, the Government of the Republic of Korea, China Ocean Mineral Resources Research and Development Association, Deep Ocean Resources Development Co. Ltd. and the Institut français de recherche pour l'exploitation de la mer. As at 16 December 2015, each of those contractors had applied for a five-year extension of its contract. Consideration of the applications is on the agenda of the Commission (see ISBA/22/LTC/2).

II. Status of consultations regarding the implementation of decision ISBA/19/A/12

7. By its decision of 25 July 2013 (ISBA/19/A/12), the Assembly established an annual overhead charge of $47,000 to cover the costs incurred by the Authority in administering and supervising contracts. The charge is due to be paid by each contractor by 31 March each year. The decision is to be implemented through the addition of two new clauses (sects. 10.5 and 10.6) to the standard clauses for contracts for exploration. The decision of the Assembly also specifies the date of its entry into force (25 July 2013) and contains special provisions regarding its effect in respect of existing contracts and pending and approved applications submitted before 25 July 2013.

A. Applications submitted after 25 July 2013

8. The decision of the Assembly has immediate effect from the date of its adoption (25 July 2013), meaning that standard clauses 10.5 and 10.6 will apply automatically to any contract entered into as a result of an application for approval of a plan of work for exploration submitted after that date.

B. Existing contracts

9. With regard to contracts for exploration that had already entered into force as at 25 July 2013, the Assembly requested the Secretary-General to consult each contractor with a view to revising the contracts, in accordance with section 24.2 of the standard clauses, in order to incorporate clauses 10.5 and 10.6. Those consultations are in progress and their status is reflected in annex II to the present report. Furthermore, in the case of contracts that are due to expire, standard clauses 10.5 and 10.6 will be applicable to the period of any extension of the contract.

C. Applications submitted before 25 July 2013

10. Four of the seven applications that the Council approved at its twentieth session, in July 2014, were submitted before 25 July 2013. Those were from the Ministry of Natural Resources and Environment of the Russian Federation (submitted on 6 February 2013), UK Seabed Resources Ltd. (submitted on 8 February 2013), the Government of India (submitted on 26 March 2013) and Ocean Mineral Singapore Pte Ltd. (submitted on 19 April 2013). The Ministry of Natural Resources and Environment of the Russian Federation and Ocean Mineral Singapore Pte Ltd. agreed to include the new standard clauses in their respective contracts, while consultations are continuing with UK Seabed Resources Ltd. and the Government of India in that respect. The contracts for exploration with the Institut français de recherche pour l'exploitation de la mer (polymetallic sulphides) and Marawa Research and Exploration Ltd. (polymetallic nodules), as a result of the approval of their applications submitted on 23 May and 30 May 2012, respectively, also include those standard clauses.

III. Recommendation

11. The Commission is invited to take note of the present report.

Annex I

Status of approved contracts for exploration

A. Contracts for exploration for polymetallic nodules

	Contractor	*Date of entry into force*	*Sponsoring State*	*General location of the exploration area*	*Date of expiry*
1	Interoceanmetal Joint Organization	29 March 2001	Bulgaria, Cuba, Czech Republic, Poland, Russian Federation and Slovakia	Clarion-Clipperton Fracture Zone	28 March 2016
2	Yuzhmorgeologiya	29 March 2001	Russian Federation	Clarion-Clipperton Fracture Zone	28 March 2016
3	Government of the Republic of Korea	27 April 2001	–	Clarion-Clipperton Fracture Zone	26 April 2016
4	China Ocean Mineral Resources Research and Development Association	22 May 2001	China	Clarion-Clipperton Fracture Zone	21 May 2016
5	Deep Ocean Resources Development Co. Ltd.	20 June 2001	Japan	Clarion-Clipperton Fracture Zone	19 June 2016
6	Institut français de recherche pour l'exploitation de la mer	20 June 2001	France	Clarion-Clipperton Fracture Zone	19 June 2016
7	Government of India	25 March 2002	–	Central Indian Ocean Basin	24 March 2017
8	Federal Institute for Geosciences and Natural Resources of Germany	19 July 2006	Germany	Clarion-Clipperton Fracture Zone	18 July 2021
9	Nauru Ocean Resources Inc.	22 July 2011	Nauru	Clarion-Clipperton Fracture Zone (reserved area)	21 July 2026
10	Tonga Offshore Mining Limited	11 January 2012	Tonga	Clarion-Clipperton Fracture Zone (reserved area)	10 January 2027
11	Global Sea Mineral Resources NV	14 January 2013	Belgium	Clarion-Clipperton Fracture Zone	13 January 2028

	Contractor	*Date of entry into force*	*Sponsoring State*	*General location of the exploration area*	*Date of expiry*
12	UK Seabed Resources Ltd.	8 February 2013	United Kingdom of Great Britain and Northern Ireland	Clarion-Clipperton Fracture Zone	7 February 2028
13	Marawa Research and Exploration Ltd.	19 January 2015	Kiribati	Clarion-Clipperton Fracture Zone (reserved area)	18 January 2030
14	Ocean Mineral Singapore Pte Ltd.	Signed in Kingston on 15 January 2015 and in Singapore on 22 January 2015	Singapore	Clarion-Clipperton Fracture Zone (reserved area)	21 January 2030
15	UK Seabed Resources Ltd.	To be signed	United Kingdom of Great Britain and Northern Ireland	Clarion-Clipperton Fracture Zone	–
16	Cook Islands Investment Corporation	To be signed	Cook Islands	Clarion-Clipperton Fracture Zone (reserved area)	–
17	China Minmetals Corporation	To be signed	China	Clarion-Clipperton Fracture Zone (reserved area)	–

B. Contracts for exploration for polymetallic sulphides

	Contractor	*Date of entry into force*	*Sponsoring State*	*General location of the exploration area*	*Date of expiry*
1	China Ocean Mineral Resources Research and Development Association	18 November 2011	China	South-west Indian Ridge	17 November 2026
2	Government of the Russian Federation	29 October 2012	–	Mid-Atlantic Ridge	28 October 2027
3	Government of the Republic of Korea	24 June 2014	–	Central Indian Ocean	23 June 2029
4	Institut français de recherche pour l'exploitation de la mer	18 November 2014	France	Mid-Atlantic Ridge	17 November 2029

	Contractor	*Date of entry into force*	*Sponsoring State*	*General location of the exploration area*	*Date of expiry*
5	Government of India	To be signed	–	Indian Ocean Ridge	–
6	Federal Institute for Geosciences and Natural Resources of Germany	6 May 2015	Germany	Central Indian Ridge and South-east Indian Ridge	5 May 2030

C. Contracts for exploration for cobalt-rich ferromanganese crusts

	Contractor	*Date of entry into force*	*Sponsoring State*	*General location of the exploration area*	*Date of expiry*
1	Japan Oil, Gas and Metals National Corporation	27 January 2014	Japan	Western Pacific Ocean	26 January 2029
2	China Ocean Mineral Resources Research and Development Association	29 April 2014	China	Western Pacific Ocean	28 April 2029
3	Ministry of Natural Resources and Environment of the Russian Federation	10 March 2015	–	Magellan Mountains in the Pacific Ocean	9 March 2030
4	Companhia de Pesquisa de Recursos Minerais S.A.	9 November 2015	Brazil	Rio Grande Rise in the South Atlantic Ocean	8 November 2030

Annex II

Status of consultations with regard to the revision of contracts for exploration existing as at 25 July 2013

Contractor	*Status*
Government of the Russian Federation (sulphides)	Accepted on 23 July 2015
China Ocean Mineral Resources Research and Development Association (sulphides)	Accepted on 1 July 2015
Tonga Offshore Mining Limited	Accepted on 18 February 2014
Nauru Ocean Resources Inc.	Accepted on 9 July 2015
Institut français de recherche pour l'exploitation de la mer (nodules)	Under consideration
Global Sea Mineral Resources NV	Accepted on 19 December 2013
China Ocean Mineral Resources Research and Development Association (nodules)	Accepted on 1 July 2015
Yuzhmorgeologiya	Accepted on 17 July 2015
Government of India	Fee paid for 2015
Government of the Republic of Korea	Accepted on 17 June 2014
Federal Institute for Geosciences and Natural Resources of Germany	Accepted on 21 March 2014
Deep Ocean Resources Development Ltd.	Accepted on 9 January 2014
Interoceanmetal Joint Organization	Accepted on 28 April 2015
UK Seabed Resources Ltd.	Fee paid for 2014 and 2015

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Procedures for the handling of confidential data and information pursuant to rule 12 of the rules of procedure of the Legal and Technical Commission

Note by the secretariat

I. Introduction

1. By paragraph 8 of its decision ISBA/20/C/31, the Council of the International Seabed Authority requested the Legal and Technical Commission to prepare draft procedures on the handling of confidential data and information, as provided for in rule 12 of the rules of procedure of the Commission (ISBA/6/C/9), to be submitted to the Council for consideration and approval not later than at its 2016 session. Under rule 12 (2), the Commission is to recommend to the Council, for approval, procedures on the handling of confidential data and information coming to the knowledge of members of the Commission by reason of their duties for the Commission. Such procedures are to be based upon the relevant provisions of the United Nations Convention on the Law of the Sea, the rules, regulations and procedures of the Authority and the procedures established by the Secretary-General pursuant thereto in order to carry out his responsibility to maintain the confidentiality of such data and information. The present note has been prepared in response to that request.

II. Background

2. In 2013, at the nineteenth session of the Commission, members drew attention to the provisions of article 163 (8) of the Convention and rule 11 of the rules of procedure pertaining to financial interests in activities relating to exploration and exploitation in the Area. The Commission requested the secretariat to provide it with clarification and guidance as to the scope and interpretation of those provisions (see ISBA/19/C/14, para. 24). Pursuant to that request, the secretariat, with the assistance of a consultant, prepared a report on considerations relating to the interpretation and application of article 163 (8) of the Convention and of rule 11 of

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the rules of procedure (ISBA/20/LTC/CRP.2), which contained recommendations for consideration by the Commission.

3. The Commission considered the report and guidance prepared by the secretariat at its twentieth session, in 2014. It emphasized that it was primarily incumbent on each member of the Commission to ensure that he or she complied with the obligations set out in the Convention in the interest of transparency and accountability and the evolving workload of the Commission. The Commission also considered that the provisions of rule 11 of its rules of procedure, together with the written undertaking signed by each member upon joining, were sufficient and satisfactory to guarantee transparency and secure such accountability from members (see ISBA/20/C/20, para. 36). Notwithstanding the conclusions reached by the Commission, as indicated above, the Council, by paragraph 8 of its decision ISBA/20/C/31, requested the Commission to prepare draft procedures on the handling of confidential data and information.

III. Relevant provisions of the Convention and the Regulations

4. Article 163 (8) of the Convention stipulates the following:

> Members of Commissions shall have no financial interest in any activity relating to exploration and exploitation in the Area. Subject to their responsibilities to the Commissions upon which they serve, they shall not disclose, even after the termination of their functions, any industrial secret, proprietary data which are transferred to the Authority in accordance with Annex III, article 14, or any other confidential information coming to their knowledge by reason of their duties for the Authority.

5. An equivalent provision in relation to non-disclosure by the Secretary-General and staff of the secretariat appears in article 168 (2). Accordingly, while articles 163 and 168 establish obligations of non-disclosure, those obligations are expressly qualified as "subject to their responsibilities" to the Commission and the Authority, respectively. It can be inferred that the qualification is in each case intended to ensure that confidential information is available for use by the Commission and by the Secretary-General and his or her staff in the proper performance of their duties.

6. While the Convention thus establishes an obligation not to disclose confidential information, and to some extent defines what data and information are to be considered confidential, it does not deal with the procedures by which confidential information is to be handled. Instead, the procedures are outlined in the various sets of regulations on prospecting and exploration. Thus, regulation 37 of the Regulations on Prospecting and Exploration for Polymetallic Nodules in the Area (ISBA/19/C/17, annex) deals with procedures to ensure confidentiality.[1] Regulation 37 (3) provides that the Commission is to protect the confidentiality of confidential data and information submitted to it pursuant to the Regulations or a contract issued thereunder. Thereafter, the obligations of non-disclosure under article 163 (8) of the Convention are repeated.

[1] The same provision is found in regulation 39 of the Regulations on Prospecting and Exploration for Polymetallic Sulphides in the Area (ISBA/16/A/12/Rev.1, annex) and regulation 39 of the Regulations on Prospecting and Exploration for Cobalt-rich Ferromanganese Crusts in the Area (ISBA/18/A/11, annex).

7. In addition, members of the Commission are also bound individually by regulation 37 (2), which provides that a person who is authorized to have access to confidential data and information is to make a written declaration witnessed by the Secretary-General to the effect that the person acknowledges his or her obligation and agrees to comply with the applicable regulations and procedures established to ensure the confidentiality of such data and information. In accordance with that provision, such a declaration is routinely made by each member of the Commission immediately following his or her election.

8. Pursuant to regulation 37 (1) of the Nodules Regulations,[2] the Secretary-General is responsible for maintaining the confidentiality of all confidential data and information. To achieve that objective, the Secretary-General is to establish procedures, consistent with the provisions of the Convention, governing the handling of confidential information by members of the secretariat, members of the Commission and any other person participating in any activity or programme of the Authority.

9. Pursuant to that obligation, the Secretary-General, in 2011, issued procedures for information sensitivity, classification and handling in the form of a Secretary-General's bulletin (ISBA/ST/SGB/2011/03). Such bulletins are official documents of the Authority, issued to promulgate policy on questions that engage the responsibility of or involve formal acts carried out by the Secretary-General under the Staff Regulations and Rules, operational rules of the organs of the Authority or any other relevant regulations, agreement or protocol.

10. In the bulletin, the Secretary-General established procedures to ensure the appropriate classification and secure handling by the secretariat of confidential data and information entrusted to or originating from the Authority, with a view to implementing article 168 of the Convention and the Regulations. The Secretary-General defined therein the scope of applicability and the responsibilities and basic obligations of staff, in addition to elaborating on the classification principles, classification levels and procedures for identification and marking of documents, including those to be provided to members of the Commission in the course of their work. He also set out the disciplinary process in the case of alleged violations by staff of the secretariat. The bulletin entered into force on 1 February 2011.

11. Annex II to the bulletin contains additional procedures for the handling of confidential data and information transferred to the Authority or to any other person (including members of the Commission) participating in any activity or programme of the Authority pursuant to the Regulations or a contract issued thereunder. It contains procedures on general security, system access control, authenticity and data access security. It also contains procedures for communication security, data security and the handling and processing of data and information, together with a declaration of confidentiality to be signed by persons authorized to have access to such confidential data and information.

[2] See also regulation 39 (1) of the Sulphides Regulations and regulation 39 (1) of the Crusts Regulations.

IV. Discussion and recommendation

12. The procedures contained in annex II to the Secretary-General's bulletin on the handling of confidential data and information would appear to be sufficient and appropriate to safeguard the confidentiality of confidential data and information used by members of the Commission in the course of their duties. It is to be noted, however, that not all the provisions are binding upon members. Some elements, such as the basic obligations and disciplinary measures in the event of violations contained in section 4 of the bulletin, are clearly not applicable because members of the Commission are not staff members of the secretariat. In any case, it may be also noted that, should it be alleged that a member of the Commission has breached the obligation of non-disclosure, the Council has the power under rule 13 of the rules of procedure to institute appropriate proceedings (the precise nature of which is not specified).

13. Other provisions of the bulletin, however, in particular the entirety of its annex II, could be applied to members of the Commission and would appear to provide a satisfactory response to the requirement under rule 12 of the rules of procedure to establish procedures on the handling of confidential data and information. The approach would also be consistent with the Regulations, which empower and require the Secretary-General to establish procedures to govern the handling of confidential data and information by members of the secretariat, members of the Commission and others. In that regard, it may be considered undesirable to establish separate, and potentially inconsistent, procedures for that purpose applicable only to members of the Commission.

14. Taking into account the foregoing, in particular the need to ensure the consistent application of the existing procedures formulated by the Secretary-General, the Commission may wish to recommend to the Council that it take a formal decision to apply the additional procedures for the handling of confidential data and information contained in annex II to the Secretary-General's bulletin to the members of the Commission, mutatis mutandis.

15. The Commission is invited to take note of the present note and make an appropriate recommendation to the Council.

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Implementation of Nauru Ocean Resources Incorporated training programme, December 2015

Note by the secretariat

1. On 5 November 2015, the Secretary-General of the International Seabed Authority received a training proposal from Nauru Ocean Resources Incorporated (NORI), in accordance with its exploration contract for polymetallic nodules signed with the Authority on 22 July 2011.

2. According to the training proposal, NORI would offer two candidates from developing States the opportunity to attend as trainees an environmental planning workshop, to be held by NORI in Ghent, Belgium, on 11 and 12 December 2015.

3. At the workshop, NORI would review its plans for conducting environmental baseline studies within its nodule exploration licence area, located at water depths of 4,500 m in the Clarion-Clipperton Zone. Environmental monitoring plans for mining tests would also be reviewed, and potential partnerships and collaborations for conducting the studies explored.

4. According to the training proposal, the candidates must be undergraduate students or young scientists studying marine science or environmental science. NORI would cover the costs of economy class air travel, local transportation, if needed, and accommodation for the trainees.

5. On 26 November 2015, NORI announced that the location of the workshop had been moved to London.

6. On receipt of the training proposal, the secretariat advertised it online and contacted the candidates who had been selected by the Legal and Technical Commission as alternates for previous training programmes to enquire about their interest in and availability for the NORI training opportunity. The deadline for the submission of applications was set for 20 November 2015.

7. By the deadline, a total of five applications had been received. After consultation with NORI, Renée McDonald (Jamaica) and Oresajo Bamidele (Nigeria) were selected as the candidates for the training and Ahmed Sabry (Egypt) was

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selected as an alternate. While Ms. McDonald participated successfully in the workshop, Mr. Bamidele, unfortunately, did not succeed in obtaining a visa to travel to the United Kingdom of Great Britain and Northern Ireland for the workshop. It was not possible for Mr. Sabry to obtain a visa either.

8. Ms. McDonald submitted her training report on 24 December 2015, which was posted on the Commission's secure website.